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CLEARINGHOUSE RULE 94−192

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The title to s. DOC 309.56 should not be shown here since it is not affected by the rule.

b. Underscored material should immediately follow adjacent stricken material. [See s. 1.06 (1), Manual.] Thus, for example, in s. DOC 309.56 (1), "~~inmates~~ an inmate" should replace "an ~~inmates~~ inmate." There are several instances of this error in the rule.

c. Will the policies and procedures established by a warden under s. DOC 309.56 (8) be promulgated as rules? [See ss. 227.01 (13) and 227.10 (1), Stats.]

4. Adequacy of References to Related Statutes, Rules and Forms

The last paragraph of the Note to s. DOC 309.56 (4) states: "The policy on telephone calls, DOC 309.56 to 309.60, substantially conforms to the American Correctional Association's, *Manual of Standards for Adult Correctional Institutions* (1990), standard 3-4439." A review of Standard 3-4439, furnished by the Department of Corrections, contains the following pertinent comment: "Telephone facilities should permit reasonable and equitable access to all inmates and **permit a reasonable amount of privacy**. Procedures should specify the hours during which the telephone is available, the maximum length of calls, and any limitation on calls. All long-distance calls should be made collect" (emphasis added).

Because the proposed revision authorizes institution staff to monitor and record telephone calls by inmates, except for an approved call to an attorney, it appears that the new policy is inconsistent with the requirement in Standard 3-4439 that "(t)elephone facilities should...permit a reasonable amount of privacy." Therefore, it would be appropriate to revise this paragraph in the Note to reflect the new policy prescribed in the rule revision.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second sentence of the fifth paragraph of the analysis, "inform" should replace "informed."

b. Section DOC 309.56 (6) requires an inmate to be given "...a notice written in English and Spanish which informs him or her of the monitoring and recording of...[telephone] calls." The Note to sub. (6) describes the requirement of written notification regarding the monitoring and recording of telephone calls. The Note also states: "Notice to accommodate non-English or non-Spanish speaking inmates is expected to be provided on a case-by-base basis." It is evident from a review of the federal cases cited in the Note, which discuss the authority of a correctional institution to monitor and record inmate telephone calls, that actual notice of the policy is required, if the policy is to withstand constitutional scrutiny. Therefore, notice to accommodate non-English or non-Spanish speaking inmates should be required by rule, rather than mentioned as an expectation in the Note.